

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

WASHINGTON, D.C.

MAY 15 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reexamination of the Comparative)
Standards for New Noncommercial)
Educational Applicants)

MM Docket No. 95-31

To: The Commission

DOCKET FILE COPY ORIGINAL

JOINT COMMENTS OF NCE LICENSEES

Arizona Board of Regents for Benefit of the University of
Arizona, Board of Regents of the University of Wisconsin System,
Kent State University, Nevada Public Radio Corporation,
Northeastern Educational Television of Ohio, Inc., Ohio
University, St. Louis Regional Educational and Public Television
Commission and WAMC (together, the "NCE Licensees") submit these
Joint Comments in response to the Notice of Proposed Rulemaking
in MM Docket No. 95-31 (released March 17, 1995) ("NPRM").

In this proceeding, the Commission continues its
reexamination of the comparative selection criteria to be applied
to mutually exclusive noncommercial educational ("NCE") broadcast
applicants. The Commission has concluded that the record in GC
Docket No. 92-52 on the same issue is not sufficient because the
comments received therein may not be representative of the full
range of actual and potential NCE station operators, particularly

No. of Copies rec'd
List ABCDE

019

in view of the "disparity in viewpoints" between the proposals of America's Public Television Stations/National Public Radio ("APTS/NPR"), which were supported by NCE Licensees represented by this firm, and the National Federation of Community Broadcasters ("NFCB").

As the Commission is aware, representatives of APTS/NPR, NFCB and the NCE Licensees have met in an attempt to resolve their different approaches and thereby assist the Commission in its determinations. These discussions have successfully resulted in a proposal for NCE comparative criteria, as presented in comments to be filed by APTS/NPR. The NCE Licensees support this proposal and believe that it focuses attention on broadly fair and determinable factors that, when applied, will assist the Commission in selecting the best NCE applicant.

The NCE Licensees

The NCE Licensees all operate noncommercial educational radio and/or television stations. They include both public and private non-profit community licensees, including licensees operating single stations, multiple stations in a single market and networks of stations serving multiple locales. They are all vitally concerned about the comparative criteria that will henceforth be applied to new NCE stations and, most likely, to NCE comparative renewals as well.

Proposed Criteria

The NCE Licensees urge the Commission to adopt the following criteria for comparing NCE applicants:

(a) When evaluated in light of the overall proposal of the applicant, which applicant will provide a local educational program service that best serves the needs of the community.

The factors relevant to this consideration are:

(i) Whether the governing board of the applicant is representative of the community, including its racial, ethnic and gender composition and the various educational, cultural and other groups in the community;

(ii) Whether the applicant is integrated into the educational, cultural, social and civic organizations and institutions in the community;

(iii) Whether the applicant has ascertained the educational, cultural, social and civic needs of the community and proposed a program service that is responsive to those ascertained needs and will enhance the intellectual, cultural, social and educational life of the community; and

(iv) Whether the applicant has demonstrated that it has a reasonable prospect of effectuating its proposal.

(b) Whether the applicant will increase the diversity of noncommercial educational programming to the community.

(c) Whether the applicant proposes to provide a first, second or third noncommercial signal to a meaningful population.

The first criterion stresses NCE broadcasting's mission to provide programming that will serve the diverse needs and

interests of the local community. However, it properly recognizes that, in evaluating applicants, the Commission cannot and should not simply make unguided comparative judgments about programming proposals. Instead, the criterion looks to certain structural factors, (i) representativeness and (ii) ties to the community, (iii) to the foundation for responsive programming proposals in ascertained community needs, and (iv) to an applicant's capabilities for effectuating its proposals.

The second criterion recognizes that a key aspect of NCE broadcasting is to increase the diversity of programming in the community. The NCE Licensees stress that this judgment is not a structural one based on diversity of ownership, but on an evaluation of whether an applicant's proposal to provide NCE programming expands on programming services already available. This approach is consistent with current fiscal realities and the FCC's long-standing recognition that common ownership of NCE stations may increase efficiencies and actually result in a greater diversity of programming services. It also recognizes that the public interest may not best be served by a new NCE broadcaster that simply seeks to provide a programming service similar to and competitive with one already in the community.

The third criterion is consistent with the FCC's traditional application of Section 307(b) in the NCE context and the explicit Congressional goal, articulated in Section 396(a)(7) of the Communications Act, that public telecommunications services be

made available to all citizens of the United States. It is also consistent with the funding priorities of the Public Telecommunications Facilities Program of the National Telecommunications and Information Administration, which favors proposals to provide NCE coverage to unserved and underserved areas.

The NCE Licensees believe that these criteria, as explained in greater detail in the APTS/NPR comments, are properly focused on matters relevant to the NCE service's goals, are broadly fair, and are readily capable of application by decision-makers within the FCC. The NCE Licensees therefore urge that they be adopted by the FCC.

Other Issues

The NCE Licensees concur with APTS/NPR that the Commission should abandon the mandatory consideration of time sharing in NCE comparative hearings and that auxiliary power is an insignificant and irrelevant factor in any comparative analysis. The NCE Licensees also agree that the Commission should not attempt to develop a point system for NCE comparative cases, but should instead consider procedures, such as paper hearings, to simplify, expedite and reduce the overall cost of comparative hearings.

The NCE Licensees have no objection to a holding period for NCE comparative hearing winners, so long as the Commission makes clear that exceptions will be made in appropriate cases. The Commission's purpose in adopting a holding period should be to

police the NCE comparative process and to avoid trafficking in NCE licenses. However, the NCE Licensees are concerned that, with federal and state funding cutbacks, public broadcasting stations may be entering a period that will require significant restructuring of NCE ownership and operations to increase efficiency. Any such reorganization should clearly qualify for an exception to any holding period requirement.

Comparative Renewal Proceedings

The NPRM, at n.1, states that this proceeding does not "as a general matter" consider the standards applicable to resolving mutually exclusive applications filed against renewal applicants. However, it is hard to imagine that, if comparative standards are adopted for proceedings involving new NCE applicants, the Commission will continue to apply the old NCE criteria in renewal cases. Recognizing of course that the Commission intends to review the comparative renewal process generally in another proceeding, the NCE Licensees merely state here that, with appropriate application of renewal expectancies, they would support the use of the NCE comparative set forth in these comments in any comparative renewal proceeding arising prior to the conclusion of the general comparative renewal rulemaking.

Respectfully submitted,

ARIZONA BOARD OF REGENTS ON BEHALF
OF THE UNIVERSITY OF ARIZONA

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM

KENT STATE UNIVERSITY

NEVADA PUBLIC RADIO CORPORATION

NORTHEASTERN EDUCATIONAL TELEVISION
OF OHIO, INC.

OHIO UNIVERSITY

ST. LOUIS REGIONAL EDUCATIONAL AND
PUBLIC TELEVISION COMMISSION

WAMC

By: Todd D. Gray
Todd D. Gray

Their Attorney

Dow, Lohnes & Albertson
1255 23rd Street, NW
Suite 500
Washington, D.C. 20037
(202) 857-2571

May 15, 1995